"We have in the Federated Malay States a law under which such a marriage (i.e. a monogamous marriage) can be celebrated and when so celebrated it is legally recognised as a valid marriage. Moreover, the prohibition of either spouse marrying another person while such marriage subsists is enforceable by penal sanction. It is also possible in the Federated Malay States for persons to enter into polygamous marriages and acquire the status arising out of such marriages or conferred upon the parties by the law or custom under which such marriages are contracted; and the status and the rights and obligations flowing therefrom are given legal recognition in the Courts of the Federated Malay States as part of the local civil law.

I am therefore bound to hold and so to direct myself that as monogamous and polygamous marriages are recognised by the civil law, a man who enters into a marriage relationship with a woman according to monogamous rites takes upon himself all the obligations springing from a monogamous relationship and acquires by law the status of 'husband' in a monogamous marriage."

That case, of course, is not on all fours with the present one. Nevertheless the course of reasoning that would seem to be adumbrated in the passage that has been quoted is very similar to the course of reasoning that I have followed here.

Before departing from the case one further observation should be made. At first sight it may seem strange that there would appear to be no assistance to be had from the decisions of the Courts in India where the position regarding domicile is so similar to the position here. The reason, however, is probably to be found in the fact that section 19 of the Indian Divorce Act, which corresponds to section 15 of our Ordinance, does not include "that the marriage is invalid by the law of the place in which it was celebrated" as one of the grounds on which a decree may be granted and in the case of *Gasper* v. *Gonsalves* (6) it was held that in India the Court had no jurisdiction to make a decree of nullity on the ground that a marriage was invalid.

There is, however, some indication as to the attitude of Indian jurists to be found in the following passage from the late *Syed Ameer Ali's* treatise on the Mahommedan Law (5th ed., p. 151):—

"As long as a Musulman retains his original domicile, so long his status and his personal capacity to do certain legal acts remain subject to the Islamic Law. The moment, however, he abandons the domicile of origin, or as soon as he acquires or adopts a new domicile, he ceases to be governed by the law of his nation. For example, an Indian Musulman when he once takes up his abode permanently in England, or shows distinctly by some conduct on his part that his stay in this country is not in the nature of a sojourn, but that he has what is called an *animus manendi*, is subject thenceforward, in all matters relating to succession and personal status, to the English Law. He ceases to be under the jurisdiction of the Musulman Civil Law. The moral and religious portions of the law remain binding upon his conscience, but his subjection to the jurisdiction of the English Law has the effect of withdrawing him from the *regime* of the secular law of his own nation."

Later in the same treatise the learned author discusses the question of the legitimacy of the children of a marriage between a Moslem woman and a man professing another religion. He points that the law of Islam "discountenances" such marriages, but goes on to say (at p. 351):—

"According to the *Majm'a-ul-Fatawa*, the *Durr-ul-Mukhtar* and the *Radd-ul-Muhtar* such a marriage is absolutely nugatory, and if there is cohabitation, it is tantamount to *zina*. Naturally, in the opinion of these jurists, the children would be illegitimate. This is an extreme doctrine, the enforcement of which in British India, would not only be attended with difficulty, but lead to consequences of an anomalous character. For example, if a non-Moslem, whose personal law recognised a marriage with a woman of a different persuasion, or who could contract such a marriage under the *lex loci* or Municipal Law, — were to marry a Musulman woman, she probably can get the marriage set aside on the ground that it was unlawful according to her personal law. But if she chose to abide by it, there is no machinery by which it can be cancelled. The issue of such a union, being regarded as illegitimate, would not be entitled to inherit to their Musulman relatives but would certainly inherit from their father, as they would be legitimate according to his personal law. Neither would they inherit from their mother, if she died in the Faith of Islam."

While those passages may not very strongly support they certainly detract in no way from the views that have been expressed here.

The petition is dismissed.

Petition dismissed.

Solicitors: *Bannon & Bailey.*

Re E. J. NATHAN, DECD.

[O. C. J. (Wee Chong Jin J.) July 4, 1962]

[Singapore — Originating Summons No. 148 of 1961]

Will — Devise of residuary estate to children — Vesting postponed for 10 years — Bequests revoked with substitution therefor — Whether substituted bequests vest absolutely.

On January 20, 1955, the testator made a will under clause 5(c) of which trustees were directed to stand possessed of his residuary estate in trust for his children in certain shares. Clause 5(d) stated that such shares shall not vest immediately but shall be retained by the trustees to pay the income thereof to the children for a period of ten years from the date of the testator's death. Clause 5(e) provided for certain gifts over in certain contingencies. By a codicil dated April 7, 1960, the testator revoked clause 5(c) and in place thereof directed the trustees to hold the said residuary estate for his children in equal shares. The question for determination was whether the codicil on its true construction also revoked clause 5(d) and (e) of the will on the principle that where a gift is revoked it revokes the gift over clauses dependent on it.

Held: the intention of the testator was to vary the shares his children would take and not to revoke the limitations over.

Case referred to:—

(1) *Boulcott* v. *Boulcott* (1853), 2 Eq. R. 457; 61 E.R. 627 distinguished.

ORIGINATING SUMMONS.

Punch Coomaraswamy for the Executors & Trustees.

S. H. D. Elias for the beneficiaries except J. A. Nathan.

J. Grimberg for the grandchildren.

Wee Chong Jin J.: The question to be determined is whether upon the true construction of the Will and Codicil of the testator respectively dated the 20th day of January, 1955 and the 7th day of April, 1960 and in the events which happened the bequests to the said Joseph Arnold Nathan, Sophie Mafalda Raab and Gertrude Esme Gerson contained in the testator's said Codicil vest in them absolutely upon the death of the testator or whether such vesting is postponed for a period of ten years from the date of the testator's death as mentioned in clause 5(d) of the testator's said will and is subject to the provisions of clause 5(e) thereof.

The material clause of the testator's will is clause 5(c)(d) and (e) which is as follows:—

> 5. My Trustees shall hold the net proceeds of the said sale and conversion and my ready money and any mortgage and investment upon the following trusts:—
>
> (c) Upon Trust to stand possessed of my residuary estate for my children in the following shares:—
>
> Joseph Arnold Nathan of No. 9 Jalan Petrie, Muar, Johore, Advocate and Solicitor, thirty per cent (30%);
>
> Sophie Mafalda Raab, the wife of I. J. Raab of No. 105 Allison Road, Easterwick, Melbourne, thirty per cent (30%); and
>
> Gertrude Esme Gerson of Flat 2 Wyreema, Forest Avenue, Perth, W.A. forty per cent (40%).
>
> (d) The share of my residuary estate hereinbefore given to any child of mine shall not vest immediately but shall be retained by my Trustees Upon Trust to pay the income thereof to such child for a period of ten years from the date of my death (the expiration of which period is hereinafter called "the date of distribution").
>
> (e) In the event of the failure of the trusts hereinbefore declared of and concerning the share of any child of mine by virtue of such child predeceasing me or dying before the date of distribution Upon Trust for the issue of such child as being male attain the age of 21 years or being female attain that age or marry under that age and if more than one in equal shares the share which such child would have taken if living upon the same trusts as hereinbefore declared. PROVIDED that if any child of mine shall die without leaving issue Upon Trust as to the share of such child as an accretion to (and so as to accrue equally among) those shares of my residuary estate the trusts whereof shall not at the date of such accruer have failed.

On the 7th day of April, 1960 about five years after the testator had made his will he made a codicil thereto the material portions of which are as follows:—

> *WHEREAS* by clause 5(c) of my said Will I directed my Trustees to stand possessed of my residuary estate for my children in the shares there mentioned, namely thirty per cent (30%) to my son, Joseph Arnold Nathan, thirty per cent (30%) to my daughter, Sophie Mafalda Raab, and forty per cent (40%) to my daughter, Gertrude Esme Gerson.
>
> *NOW* I hereby revoke such bequests and in place thereof I *DIRECT* that my Trustees shall stand possessed of my residuary estate for my said three children in the following shares, namely one equal third share to each of them my said children, Joseph Arnold Nathan, Sophie Mafalda Raab and Gertrude Esme Gerson. *AND* in all other respects I confirm my said Will.

Mr. Elias contends that the codicil on its true construction has also revoked clause 5(d) and (e) of the Will on the principle that where a gift is revoked it revokes the gift over clauses dependent on it and that therefore the bequests to the three named children of the testator vest in them absolutely upon the death of the testator. Mr. Elias cites several cases in support of his contention and in particular relies on the case of *Boulcott* v. *Boulcott* [1]. In that case the testator gave to his eight nephews and nieces naming them, provided that if any of them should die in his lifetime without leaving children or as to nephews should survive him and die under twenty-one, without leaving children, the share of each of them so dying should go to the survivor or survivors. The testator by a codicil revoked *inter alia* the trust created as regarded his nephew, Joseph and in all other respects confirmed his said Will. Joseph did not survive the testator having died during the testator's lifetime leaving no children. Vice-Chancellor Kindersley held:—

> "As Joseph was living when the testator revoked the gift, the testator must have had in his contemplation that he had given Joseph an one-eighth share, with limitations over in one event to his children; in another to the other nephews and nieces. He means, I think, nothing of this to take effect. He revokes it altogether, not merely as to Joseph's individual interest, but as to the limitations of his share, which were to take effect in certain events. I am of the opinion that the revocation is absolute as to the whole of that share."

Mr. Elias submits that *Boulcott's* case is on all fours with the present case and that the words in the codicil "I hereby revoke such bequests" revoked not merely the individual interests of the named residuary legatees but also the gifts over.

I am unable to agree with this contention. It is in my opinion clear from the terms of the codicil that what the testator had in his contemplation was only clause 5(c) of his said Will, namely that he had given to his three named children unequal shares in his residuary estate. By his codicil he revokes these bequests and substitutes therefor bequests of a one equal third share of his residuary estate to each of them not meaning or intending to revoke the limitations over. *Boulcott's* case is in my view therefore clearly distinguishable. The clear intention of the testator being merely to vary the shares his named children would take and not to revoke the limitations over, it is a cardinal principle of construction that effect must be given to this clear intention. Accordingly there can be no room left for invoking the principle relied on by Mr. Elias.

There will also be an order in terms of prayer 3 of the originating summons and an order that the costs of all parties of and incidental to the originating summons be taxed on the higher scale as between solicitor and client and paid out of the corpus of the testator's estate.

Order accordingly.

Solicitors: *Braddell Bros.; Elias Bros.*; ***Drew & Napier.***